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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

FILED
AUG 04 2015
CLERK'S OFFICE
DETROIT

JOSEPH WHITING,
Petitioner

vs.

Case No:06-20465-NEG-MKM-20

Civil No. _____

UNITED STATES OF AMERICA,
Respondent.

MOTION TO AMEND THE 28 U.S.C. §2255 PROCEEDINGS
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 15(C)(1)(B)

Comes Now, Petitioner Joseph Whiting, pro se, and respectfully submits the following information pursuant to Rules Governing Section 2255 Proceedings Rule 12 Applicability of the Federal Rules of Civil Procedure.

ARGUMENT

(1) Pursuant to Federal Rules of Civil Procedure Rule 15(C)(1)(B) the Relate Back Amendments Rule (c)(1)(B) states as follows:

the amendment assert a claim or defense that arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading.

(2) Petitioner Whiting original pleading attempted to set out the conduct of counsel at the appeal stage. The petitioner has an Appendi claim that counsel failed to raise on direct appeal.

(3) The petitioner was found guilty on Count Thirteen for Conspiracy to Commit Murder in violation of 18 U.S.C. §1959(a)(5). The petitioner was sentenced to 420 months on this count. When in fact §1959(a)(5) has a statutory maximum of ten years.

(4) See United States v. Lorenzo Gonzalez, 2015 U.S. App. LEXIS 7900 (9th Cir. 2015)(where the Ninth Circuit held that the violent crim in aid of a racketeering enterprise offense were subject to a 10 year maximum prison sentence under 18 U.S.C. §1959(a)(5) so the district court erred in sentencing defendant to 300 months imprisonment.

(5) See Poulsen v. United States, 2014 U.S. Dist. LEXIS 174834 (6th dist. 2014) Rule 15(c) relate back when the amendment assert a claim or defense that arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading.


(6) Appellate Counsel was ineffective for not raising this issue on appeal. The result would be a complete miscarriage of justice for this Honorable Court to not allow the petitioner to supplement the §2255 proceeding.

CONCLUSION

Based on the foregoing, the petitioner pray that this Honorable Court grant this motion to Amend pursuant to Federal Rules of Civil Procedure Rule 15(C)(1)(B).

Date: 07/23/2015

Respectfully Submitted,


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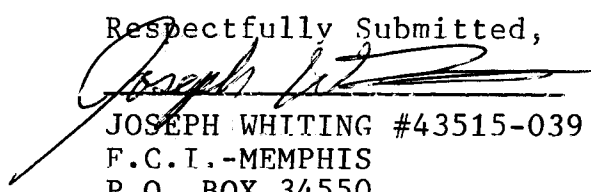
CERTIFICATE OF SERVICE

I, Joseph Whiting, certify that 6/7/23/2015, I sent a complete and correct copy of the foregoing via first class mail to the following:

Barbara L. McGuade
CHRISTOPHER GRAVELINE
ASSISTANT U.S. ATTORNEY
211 W. Fort, Suite 2532
Detroit, MI 48226

Date: 6/7/23/2015

Respectfully Submitted,


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